

First print



New South Wales

Justices Amendment (Briefs of Evidence) Bill 1997

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Justices Act 1902* to require a prosecuting authority to serve a brief of evidence on a defendant in summary matters before the hearing of the matter. The requirement extends to:

- (a) summary offences (with certain exceptions), and
- (b) indictable offences dealt with summarily.

The Bill also contains amendments to the *Criminal Procedure Act 1986* to ensure that briefs of evidence under section 33H of that Act (namely, those that are currently required to be served in connection with certain indictable offences before the defendant decides whether to allow the matter to be dealt with summarily) will be served consistently with the proposed requirements under the *Justices Act 1902*.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Justices Act 1902* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Criminal Procedure Act 1986* and the *Criminal Procedure Regulation 1995* set out in Schedule 2.

Schedule 1 [1] amends section 51B of the Principal Act as a consequence of proposed section 66H (which is to be inserted by Schedule 1 [2]).

Schedule 1 [2] inserts Subdivision 6A (proposed sections 66A–66H) into Division 2 of Part 4 of the Principal Act.

Proposed section 66A defines terms used in the Subdivision, including *brief of evidence*, *penalty notice*, *prescribed summary offence* and *prosecuting authority*.

A *brief of evidence*, in relation to a prescribed summary offence, means documents regarding the evidence that the prosecution intends to adduce in order to prove the commission of the offence and includes:

- (a) written statements taken from the persons the prosecution intends to call to give evidence in proceedings for the offence, and
- (b) any document, or other thing, identified in such a written statement as a proposed exhibit.

A *prescribed summary offence* is a summary offence other than a summary offence for which a penalty notice may be issued or a summary offence excluded by the regulations.

Proposed section 66B requires a prosecuting authority to serve a copy of the brief of evidence in respect of a prescribed summary offence on a defendant who pleads not guilty to the offence. The copy is to be served at least 14 days before the hearing of the evidence for the prosecution, unless the defendant agrees to a shorter time period, or if, in the opinion of the Justice or Justices, the circumstances of the case otherwise require.

Proposed section 66C provides that a prosecuting authority is not required to include a copy of any proposed exhibits identified in the brief of evidence if it is impossible or impractical to do so. However, the prosecuting authority is to serve a notice on the defendant specifying where and when the proposed

exhibits may reasonably be inspected and must allow the defendant a reasonable opportunity to inspect the proposed exhibits referred to in the notice.

Proposed section 66D requires a copy of the brief of evidence to comply with any requirement applicable to it prescribed by the regulations.

Proposed section 66E enables the Justice or Justices to order that all or part of the copy of the brief of evidence need not be served if there are compelling reasons not to require service or if a copy of all or part of it could not reasonably be served on the defendant. Such an order may be made subject to conditions.

Proposed section 66F (1) provides that evidence sought to be adduced by the prosecuting authority is not to be admitted if the prosecuting authority has not complied with all or any of the requirements of the Subdivision or any regulations made for the purposes of the proposed Subdivision in relation to the evidence. Proposed section 66F (2) provides that a Justice or Justices may, and on the application of the defendant must, dispense with the requirements of proposed section 66F (1). However, proposed section 66F (3) provides that proposed section 66F (2) does not apply to a requirement that is declared by the regulations to be a requirement that may not be dispensed with.

Proposed section 66G requires the Justice or Justices to grant adjournments in relation to proceedings to which proposed Subdivision 6A applies as appear just and reasonable if the copy of the brief of evidence is not served in accordance with the Subdivision.

Proposed section 66H provides that proposed Subdivision 6A, as well as any regulations made for the purposes of the Subdivision, apply to indictable offences that are dealt with summarily in accordance with Part 9A of the *Criminal Procedure Act 1986*. However, the requirement to serve the brief of evidence is satisfied by:

- (a) service of a brief of evidence under section 33H of the *Criminal Procedure Act 1986*, for indictable offences listed in Table 1 to Part 9A of that Act, before the defendant decides whether to allow the matter to be dealt with summarily, or
- (b) service of a copy of a written statement in respect of committal proceedings for the offence under Subdivision 7A of Division 1 of Part 4 of the *Justices Act 1902* in a case where the election to proceed on indictment is subsequently withdrawn.

Justices Amendment (Briefs of Evidence) Bill 1997

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Schedule 2.1 amends the *Criminal Procedure Act 1986* so that a copy of the brief of evidence served under section 33H is to comply with proposed section 66D as inserted into the *Justices Act 1902* by Schedule 1. The prosecuting authority is not required to include a copy of a proposed exhibit identified in a brief of evidence if it is impossible or impractical to copy the exhibit. However, the prosecuting authority must then comply with proposed section 66C (2) of the *Justices Act 1902*.

Schedule 2.2 makes a consequential amendment to the *Criminal Procedure Regulation 1995*.

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Justices Amendment (Briefs of Evidence) Bill 1997

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New South Wales

Justices Amendment (Briefs of Evidence) Bill 1997

No. , 1997

A Bill for

An Act to amend the *Justices Act 1902* to provide for the service of copies of briefs of evidence in proceedings for offences dealt with summarily; to amend the *Criminal Procedure Act 1986* to make related amendments; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Justices Amendment (Briefs of Evidence) Act 1997*.

2 Commencement

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This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Justices Act 1902 No 27

The *Justices Act 1902* is amended as set out in Schedule 1.

4 Other amendments

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The *Criminal Procedure Act 1986* and the *Criminal Procedure Regulation 1995* are amended as set out in Schedule 2.

Schedule 1 Amendment of Justices Act 1902

(Section 3)

[1] Section 51B Application of Division 2 to indictable offences

Insert after section 51B (2):

- (3) Subdivision 6A of Division 2 applies to an offence to which this section applies that is subject to Part 9A of the *Criminal Procedure Act 1986*, as set out in section 66H. 5

[2] Part 4, Division 2, Subdivision 6A

Insert after section 66:

Subdivision 6A Service of briefs of evidence 10

66A Definitions

- (1) In this Subdivision:

brief of evidence, in relation to a prescribed summary offence, means documents regarding the evidence that the prosecution intends to adduce in order to prove the commission of the offence and includes: 15

- (a) written statements taken from the persons the prosecution intends to call to give evidence in proceedings for the offence, and
- (b) any document, or other thing, identified in such a written statement as a proposed exhibit. 20

penalty notice means:

- (a) a penalty notice within the meaning of Part 4B, or
- (b) after the commencement of Part 3 of the *Fines Act 1996*—a penalty notice within the meaning of that Act. 25

prescribed summary offence means a summary offence other than:

- (a) an offence for which a penalty notice may be issued, or
- (b) an offence prescribed by the regulations for the purposes of this paragraph. 5

prosecuting authority means:

- (a) the Director of Public Prosecutions, or
- (b) a police officer, or
- (c) a person prescribed by the regulations for the purposes of this definition, 10

who is responsible for the conduct of a prosecution.

- (2) In this Subdivision, a reference to the defendant includes a reference to the barrister or solicitor of the defendant.

66B Brief of evidence to be served on defendant unless otherwise ordered 15

- (1) If a defendant pleads not guilty to a prescribed summary offence being prosecuted by a prosecuting authority, the prosecuting authority must, unless the Justice or Justices otherwise order in accordance with section 66E, serve or cause to be served on the defendant a copy of the brief of evidence relating to the offence. 20
- (2) The copy of the brief of evidence is to be served at least 14 days before the hearing of the evidence for the prosecution unless the defendant consents to a shorter period or, in the opinion of the Justice or Justices, the circumstances of the case otherwise require. 25

66C Exhibits

- (1) Despite section 66B, the prosecuting authority is not required to include a copy of a proposed exhibit identified in the brief of evidence if it is impossible or impractical to copy the exhibit. 30

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- (2) However, in that case the prosecuting authority is:
- (a) to serve on the defendant a notice specifying a reasonable time and place at which the proposed exhibit may be inspected, and
 - (b) to allow the defendant a reasonable opportunity to inspect each proposed exhibit referred to in the notice. 5

66D Form of copy of brief of evidence

The copy of the brief of evidence is to comply with any requirement applicable to it prescribed by the regulations made for the purposes of this Subdivision. 10

66E Discretion to order that copy of brief of evidence need not be served

- (1) The Justice or Justices may order that all or part of the copy of the brief of evidence need not be served if the Justice or Justices are satisfied: 15
 - (a) that there are compelling reasons for not requiring service, or
 - (b) that it could not reasonably be served on the defendant. 20
- (2) The Justice or Justices may make an order under this section on their own initiative or on the application of any party.
- (3) An order may be made subject to such conditions (if any) as the Justice or Justices think fit. 25

66F Evidence not to be admitted

- (1) The Justice or Justices are to refuse to admit evidence sought to be adduced by the prosecuting authority in respect of the prescribed summary offence if, in relation to that evidence, this Subdivision, or any regulations made for the purposes of this Subdivision, have not been complied with by the prosecuting authority. 30

- (2) The Justice or Justices may, and on the application of or with the consent of the defendant must, dispense with the requirements of subsection (1) on such terms and conditions as appear just and reasonable.
- (3) Subsection (2) does not apply to any requirement referred to in subsection (1) that is declared by the regulations to be a requirement that may not be dispensed with under subsection (2). 5

66G Adjournments

Without limiting the power of a Justice or Justices to adjourn proceedings, the Justice or Justices are to grant such adjournments as appear to be just and reasonable if the copy of the brief of evidence is not served in accordance with this Subdivision, and may extend accordingly the time for hearing the matter. 10
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66H Indictable offences dealt with summarily

- (1) This Subdivision, and any regulations made for the purposes of this Subdivision, apply in respect of an indictable offence that is being dealt with summarily under Part 9A of the *Criminal Procedure Act 1986*. For that purpose, a reference in this Subdivision to a prescribed summary offence includes a reference to such an indictable offence. 20
- (2) The provisions of this Subdivision requiring the service of a copy of a brief of evidence relating to such an indictable offence are taken to be satisfied in respect of any evidence the prosecution intends to adduce in the summary proceedings if:
 - (a) a copy of a brief of evidence has been served in accordance with section 33H of the *Criminal Procedure Act 1986* in respect of that evidence, or 30
 - (b) a copy of a written statement has been served, in connection with committal proceedings, in accordance with Subdivision 7A of Division 1 of Part 4 of this Act in respect of that evidence. 35

Schedule 2 Other amendments

(Section 4)

2.1 Criminal Procedure Act 1986 No 209

[1] Section 33H Information to be given to person charged (Table 1 offences)

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Omit section 33H (2) (a). Insert instead:

- (a) a copy of the brief of evidence relating to the offence that complies with section 66D of the *Justices Act 1902*, and

[2] Section 33H (2A)

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Insert after section 33H (2):

- (2A) Despite subsection (2) (a), the prosecuting authority is not required to include a copy of a proposed exhibit identified in a brief of evidence if it is impossible or impractical to copy the exhibit. However, the prosecuting authority must in that case comply with section 66C (2) of the *Justices Act 1902*.

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[3] Section 33H (4)

Insert after section 33H (3):

- (4) In this section, a reference to a *brief of evidence* is a reference to a brief of evidence within the meaning of Subdivision 6A of Division 2 of Part 4 of the *Justices Act 1902*.

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2.2 Criminal Procedure Regulation 1995

Clause 16 Form and content of briefs of evidence: sec 33I

Omit the clause.